



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No. : Re. 38,787  
Patentees : Joseph B. SAINTON et al.  
Issued : August 30, 2005  
Serial No. : 09/392,676  
Filed : September 8, 1999

**RECEIVED**

**DEC 16 2010**

**OFFICE OF PETITIONS**

Docket No. : 740301-411 (2972-104)  
Customer No. : 06449  
For : APPARATUS AND METHODS FOR  
: NETWORKING OMNI-MODAL RADIO DEVICES

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**REQUEST FOR RECONSIDERATION OF THE DECISION DISMISSING THE  
PETITION UNDER RULES 1.181(b) AND 1.377 REQUESTING THE OFFICE TO  
ACCEPT PAYMENT OF A THIRD MAINTENANCE FEE**

**BACKGROUND**

On June 2, the patentee's representative attempted to pay the third maintenance fee (11 ½ year) for Patent No. 5,761,621 ("the '621 patent"). Said maintenance fee payment was directed to Reissue Patent No. RE38,787, which is a reissue of the '621 patent. In response to said attempt to pay said maintenance fee, the Office, On June 4, 2010, mailed a NOTICE OF NON-ACCEPTANCE OF PATENT MAINTENANCE FEE. On June 10, 2010, the patentee's representative submitted a petition under Rules 1.181(b) and 1.377 requesting the Office to accept the payment of said third maintenance. On September 15, 2010, said petition was resubmitted. On Oct. 25, 2010, the Office dismissed said petition on the grounds that the credit card payment forms submitted with said petition were redacted before payment was collected, but noted that "[t]he Office should have accepted the timely paid 11 ½ year maintenance fee and surcharge for RE38,787 because it was never surrendered."

### **REQUESTED RELIEF**

Patentee's undersigned representative respectfully requests that the Office reconsider its decision to dismiss the petition and request that the Office **DENY** said petition because no maintenance fee is due. That is, the petition should be denied because all of the required maintenance fees have been paid.

**In the alternative**, Patentee's undersigned representative respectfully requests that the Office **GRANT** said petition and accept payment of the maintenance fee. If the Office Grants said petition, the Office should charge all required amounts to Deposit Account No. 02-2135 (submitted herewith for the convenience of the Office is a Maintenance fee transmittal form).

### **DISCUSSION**

RE38,787 is a reissue of the '621 patent and RE40,540 is a divisional of RE38,787. Accordingly, more than one reissue has been granted to replace the '621 patent. According to MPEP 1415.01, "*only one maintenance fee is required* for all the multiple reissue patents that replaced the ['621] patent" (emphasis added). On June 1, 2010 the third (11 ½ year) maintenance fee for the '621 patent was paid, and, in accordance with MPEP 1415.01, the payment was directed to the "latest reissue patent that has issued" (i.e., RE40,540). Accordingly, all required maintenance fees for the '621 patent have been paid. That is, no maintenance fee payment is due in RE38,781. Hence, the Office should DENY said petition.

If the Office, however, determines that the third maintenance fee is due, then the Office should GRANT the petition and accept the payment.

Respectfully submitted,

By



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